

REMARKS

Examiner has rejected Claims 1, 2, 4, 5, 8, 9, 11, 12, 16, 18, 19, 22, 23, 25, 26 and 27 as being anticipated by U.S. Patent No. 6,533,636 to Holenstein *et al.* In response thereto, Applicant respectfully requests Examiner to consider the following arguments and amendments in view of the structural and functional differences between Applicant's device and the Holenstein *et al.* device. Specifically, Holenstein *et al.* discloses a CD spacer for building a toy yo-yo including a central axis for receiving a tether string for wrapping around the central axis, and two outer sidewalls, each outer sidewall having an attachment hub disposed on the outer sidewall for receiving a compact disc, wherein the spacer in combination with two compact discs may form a toy yo-yo. Accordingly, because Holenstein *et al.* discloses a yo-yo, which inherently requires two substantially evenly sized and/or weighted yo-yo body halves (i.e., two compact discs) for proper operation (i.e., balanced rotational inertia and/or other rotational forces and movements characteristic of toy yo-yos), it is evident that Holenstein *et al.* would be functionally inoperable or defective with only one (1) compact disc engaged to the spacer. That is, the Holenstein *et al.* device, with only one compact disc, would not (could not) be a yo-yo – the only spinning toy embodiment disclosed in the Holenstein *et al.* patent – and certainly could not be a spinning top, especially in view of the structural limitations of the spacer (i.e., substantially cylindrical-shaped body with flat ends). Unlike the Holenstein *et al.*, device, Applicant's spinning top may be effectively operated with just one compact disc. Indeed, Holenstein *et al.* does not teach utilizing the spacer and a single compact disc to effectuate a spinning toy top. In considering the structural

and functional limitations of the Holenstein *et al.* yo-yo, Applicant emphasizes that Holenstein *et al.* does not disclose, teach or claim a spinning toy top – a spinning toy widely recognized as an entirely different type of spinning toy than a yo-yo, requiring an inherently different method of play and implementation.

More specifically, yo-yos are characteristically operated via rotational inertia constrained by a tether when thrown, stopped and recalled through the air (i.e., without frictionally engaging a planar surface). Spinning tops, however, are typically operated by frictionally engaging a planar surface, and as such, incorporate operational and structural requirements, different from those of a yo-yo, to effectuate such play. Such structural requirements typically include a conical-shaped base, wherein the apex thereof is frictionally engaged with a planar surface upon imparting a rotational force thereto (i.e., typically via a spindle extending therefrom). As such, and in an effort to clarify Applicant's invention both structurally and functionally, Applicant has amended each Independent Claim to recite the limitation that "said spinning head further comprises a base for frictionally engaging a planar surface." Applicant respectfully asserts that Holenstein *et al.* does not disclose a spinning toy (yo-yo, toy top, or otherwise) that is functionally operative, and structurally equipped, to rotationally and frictionally engage a planar surface. Accordingly, and in view of the foregoing arguments and amendments, Applicant respectfully believes that the rejected claims are now in condition for allowance.

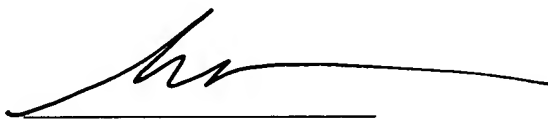
Examiner has further rejected Claims 1, 3, 10, 13, 14, 16, 17 and 24 under 35 U.S.C. 103(a) as unpatentable over U.S. Patent No. 1,139,119 to Heidenreich in view of Holenstein *et al.* In view of Applicant forgoing arguments and amendments distinguishing Applicant's device from Holenstein *et al.*, Applicant respectfully believes that Holenstein *et al.* can no longer be utilized or combined with Heidenreich to support Examiner's 35 U.S.C. 103(a) obviousness rejection. Applicant further respectfully asserts that Heidenreich also fails to teach, disclose and/or claim Applicant's claimed invention as amended. Accordingly, Applicant respectfully believes that the rejected claims are now in condition for allowance.

CONCLUSION

The above-made amendments are to form only and thus, no new matter was added. Applicant respectfully believes the above-made amendments now place the Claims and application in condition for allowance. This Response to Office Action is timely submitted within three (3) months from the mailing date of the Official Action, and is believed to be a full and complete response thereto. Should there be any questions or concerns, the Examiner is invited to telephone Applicant's undersigned attorney.

Respectfully submitted,

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Ashish D. Patel, Esq.
Attorney for Applicant
Reg. No. 50,177

Myers & Kaplan,
Intellectual Property Law, L.L.C.
1899 Powers Ferry Road
Suite 310
Atlanta, GA 30339
Phone: 770-541-7444
Fax: 770-541-7448
E-mail: apatel@mkiplaw.com

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(Name of Person Mailing)
Cynthia Pilato
(Signature of Person Mailing)
2-11-04
(Date)